

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MB Docket No. 15-167
Table of Allotments	)	RM-11751
FM Broadcast Stations	)	
(Grant, Oklahoma)	)	
	)	
Application of	)	File No. BPH-20141028AAK
Liberman Broadcasting of Dallas Licensee LLC	)	Facility ID No. 15854
Station KZMP-FM, Pilot Point, Texas	)	

**Accepted / Filed**

To: Secretary, Federal Communications Commission  
 Attn: Chief, Audio Division, Media Bureau

**AUG 24 2015**

Federal Communications Commission  
 Office of the Secretary

**RESPONSE TO ORDER TO SHOW CAUSE**

Liberman Broadcasting of Dallas Licensee LLC ("LBDL"), licensee of Station KZMP-FM, Pilot Point, Texas (Fac. ID No. 15854) ("KZMP" or "the Station"), by its attorneys and pursuant to Section 1.87 of the Commission's Rules, hereby submits its Response to the Order to Show Cause why the channel classification of KZMP should not be downgraded, which is included in the above-captioned Notice of Proposed Rule Making and Order to Show Cause ("NPRM") concerning the proposed allotment of FM Channel 286A to Grant, Oklahoma. The Grant allotment was proposed in a Petition for Rule Making filed October 29, 2014 by Katherine Pyeatt ("Pyeatt"), which conflicts with LBDL's pending application for a construction permit to implement a previously granted upgrade in KZMP's channel class from Channel 285C1 to Channel 285C0 (File No. BPH-20141028AAK).

As demonstrated by LBDL's prior submissions in this and other related proceedings, KZMP's upgraded allotment should be protected and the station should be authorized to

construct the facilities necessary to implement the upgrade. LBDL is astounded that the Bureau found it more credible that Pyeatt would construct the proposed Grant station despite LBDL's showing that she has not constructed any of the 84 previous allotments for which she has filed petitions. In that regard the track record of LBDL and its affiliates as licensees of 27 broadcast stations belie Pyeatt's claim that KZMP is preventing her from providing new service to an underserved community. Accordingly, the Bureau should maintain the current classification and allotment of KZMP, reject the proposed new allotment at Grant, Oklahoma, and grant the KZMP Application.

## **I. FACTUAL BACKGROUND**

1. On November 26, 2007, LBDL applied for a "one-step" upgrade for KZMP from Channel 285C1 to Channel 285C0 (File No. BPH-20071126AJG). The minor modification proposed in the application included relocation of KZMP to an existing "tall tower" owned by Salem Communications Corporation (the "Salem Tower"), which is used by three other FM stations, and a common antenna to be employed by some, but not all, of those stations.<sup>1</sup> The application was granted on December 3, 2008.

2. Despite the devastating impact of the financial collapse and nationwide economic downturn of the "Great Recession" in 2008, LBDL made diligent efforts to implement the C0 upgrade. LBDL's engineering staff negotiated with the tower owner and continued discussions with the existing tower tenants, particularly the two stations who would have to sign off on

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<sup>1</sup> The Salem Tower is also used by Stations KSOC(FM) (Ch. 233C, Gainesville, TX), licensed to Radio One Licenses, LLC; KWRD-FM (Ch. 264C, Highland Village, TX), licensed to an entity controlled by Salem Communications Corporation; and KESN(FM) (Ch. 277C, Allen, TX), licensed to an entity controlled by The Walt Disney Company. An existing common antenna is used by Stations KESN and KWRD-FM.

specifications for the new common antenna.<sup>2</sup> They also negotiated with manufacturers and suppliers for the purchase of the new antenna and construction of a new transmitter building. Purchase orders were written for equipment and supplies totaling approximately \$1,000,000. The proposals for the new antenna and site construction were presented for approval to the affected parties. However, for reasons not known to LBDL, approvals were delayed.<sup>3</sup> Nevertheless LBDL continued its efforts to obtain the sign-off from the other parties under the reissued permit. Currently the parties are willing to proceed with the project and LBDL expects to make further progress with Stations KWRD and KESN.<sup>4</sup>

3. On October 29, 2014, however, following the submission of LBDL's minor modification application, Pyeatt filed an application for a construction permit for a new station on Channel 286A at Grant, Oklahoma and concurrently filed her Petition for Rule Making to add Channel 286A at Grant, Oklahoma to the FM Table of Allotments.

4. On November 10, 2014, Pyeatt filed an Informal Objection, alleging that KZMP "is currently licensed as a Class C1 facility"<sup>5</sup> and characterizing the Application as "an undisclosed Upgrade."<sup>6</sup> LBDL opposed the Informal Objection on November 20, 2014 and subsequently submitted an Opposition to Pyeatt's Petition for Rule Making on December 8, 2014.

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<sup>2</sup> The existing common antenna used by two of the FM stations on the tower cannot accommodate a third station.

<sup>3</sup> On September 28, 2011, LBDL surrendered the permit and applied for a new authorization (File No. BPH-20110928AJC). The application was granted on November 1, 2011 with an expiration date of November 1, 2014.

<sup>4</sup> An additional interested party entered the picture during this period when Cumulus Licensing LLC signed a Local Marketing Agreement effective on October 8, 2013, to program KESN.

<sup>5</sup> Informal Objection at 2.

<sup>6</sup> *Id.* at 1.



## II. CIRCUMSTANCES BEYOND KZMP'S CONTROL HAVE DELAYED BUILDOUT OF THE UPGRADE.

5. As the Commission correctly recognizes in the NPRM, upon grant of KZMP's upgrade application in 2008, the FCC affirmatively modified the station's class from C1 to C0, and it remains a C0 today. Thus, Special Operating Condition 1 on the permit specifically stated:

Pursuant to the grant of this construction permit ... the FM assignment IS MODIFIED as follows:

<u>Community</u>	<u>Channel No.</u>
Pilot Point, TX	Add 285C0, Delete 285C1

Pursuant to Section 316(a) of the Communications Act of 1934, as amended, license BMLH-20070514AFY IS MODIFIED to specify operation on Channel 285C0 in lieu of Channel 285C1.<sup>7</sup>

6. Accordingly, the Class C0 status of KZMP remains in full effect and the pending modification application is merely a proposal to implement the Class C0 reservation rather than a request for an upgrade in class for this facility.<sup>8</sup> Further, and contrary to Pyeatt's claim, LBDL has not been "warehousing" spectrum without the intention to construct the authorized facilities.

7. To date, KZMP has been frustrated in its attempts to build out its C0 permit. Existing tenants on the tower the upgraded facilities will occupy have had other priorities and have not provided the consents needed to move forward with the construction. The two stations that must consent to replacement of their existing common antenna with a new antenna, to accommodate their signals along with the KZMP signal, were provided with details of the

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<sup>7</sup> FCC File No. BPH-20071126AJG, (capitalization in the original.)

<sup>8</sup> Station KZMP, in fact, is operating with an implied STA on Channel 285C1 and therefore has a continuing basis to proceed with implementation of the Class C0 assignment. See e.g., *In re WALR-FM, Palmetto, GA*, BPH-20130624ABZ, Letter from Rodolfo F. Bonacci to Cox Radio, Inc., dated August 5, 2013, at note 2.

proposed build-out.<sup>9</sup> Despite follow-up requests on several occasions, LBDL was unable to obtain the approvals it needed to actually place the orders with manufacturers and tower crews. However recent discussions have been more positive and the parties are ready to proceed; as a result, LBDL refiled the application.

8. In short, LBDL remains committed to the upgrade of KZMP. The proposed C0 facilities will allow the station to serve an additional 1.5 million people in the Dallas-Fort Worth metro area. This is a compelling incentive that belies any argument that LBDL has no interest in constructing the authorized facilities.

### **III. PYEATT'S CERTIFICATION THAT SHE WILL ESTABLISH NEW FM SERVICE IN GRANT, OK, IS NOT CREDIBLE.**

9. Pyeatt alleges that LBDL's proposal to implement its C0 upgrade should be dismissed because it stands in the way of her using the FM spectrum for new service in Grant, Oklahoma. In view of her history of filings at the FCC, this claim lacks credibility.

10. In her Form 301 application, Pyeatt states "if this channel is allotted applicant pledges to participate in the auction."<sup>10</sup> In her accompanying Petition for Rule Making, she certifies that she "will participate in the auction for the channel and if awarded the permit will promptly build the station."<sup>11</sup>

11. Notwithstanding her pledge and certification, Pyeatt's record over a period of many years demonstrates that she has no intention of using any FM spectrum. By her own

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<sup>9</sup> Pyeatt's informal objection incorrectly states that KZMP proposes use of "an existing multi-use FM antenna." Informal Objection at 3. In fact, the existing antenna will not accommodate KZMP and must be replaced. The choice of antenna and its parameters is one of the elements of the build-out that requires the consent of the other tenants on the tower.

<sup>10</sup> Pyeatt Application at Exhibit 30.

<sup>11</sup> Pyeatt Petition for Rule Making at 4.

admission, Pyeatt has submitted no fewer than 76 petitions for rule making since 2001.<sup>12</sup> And yet, the Grant Application certifies that as of October 29, 2014, “Katherine Pyeatt does not hold any broadcast CP’s or licenses.”<sup>13</sup> Thus, despite filing dozens of petitions and over 100 related submissions to the Commission, Pyeatt today holds no authorizations to operate broadcast stations in the FM band. More specifically, in the seven years since LBDL obtained its C0 construction permit, Pyeatt has filed for 14 allotments in Texas and proximate communities in Oklahoma.<sup>14</sup> True to her certification that she holds no licenses or authorizations, she has built none of them. In that period, she has been awarded five construction permits.<sup>15</sup> Three of those she sold.<sup>16</sup> The other two she cancelled.<sup>17</sup> Putting aside the question of what would motivate someone to engage in such unproductive activity, particularly given the substantial fees now charged for such filings, it is clear that Pyeatt’s certifications and pledge should not be given any credence.

12. For example, in Auction 91 Pyeatt was the winning bidder for three permits (Elkhart, TX, and two at Menard, TX). The net bid amounts were \$27,950 for the Elkhart permit and \$3,250 and \$2,925, respectively, for the two Menard permits. Despite paying these amounts,

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<sup>12</sup> Pyeatt Reply to Opposition dated December 31, 2014 and Attachment A-1. See Advanced Search results for “Katherine Pyeatt” in the FCC’s Electronic Comment Filing System (ECFS) at <http://apps.fcc.gov/ecfs/solr/search.jsessionid=r9hYJsKQIR1tQ20yBpTrszGhdvJ2QvChXh387P25QvTkVcgGxjJQ!-180876916!1175060748>, last visited November 17, 2014. See also, Advanced Search results for “Katherine Pyeatt” in Bloomberg BNA, Telecommunications Law Resource Center at [http://telecomlaw.bna.com/terc/display/split\\_display.adp?searchid=23963029&doctypeid=1&type=court&split=0&mode=toc&pg=0](http://telecomlaw.bna.com/terc/display/split_display.adp?searchid=23963029&doctypeid=1&type=court&split=0&mode=toc&pg=0), last visited November 18, 2014.

<sup>13</sup> Pyeatt Application at Exhibit 5 (Existing Ownership).

<sup>14</sup> Communities for which Pyeatt has proposed service since 2007 include: Dilley, TX, BNPH-20070119ACA; Hugo, OK, BNPH-20070119ACB; Antlers, OK, BNPH-20070515AEM; Harper, TX, BNPH-20070618ABV; Batesville, TX, BNPH-20080812AAI; Stonewall, TX, BNPH-20090825BIF; Kingsland, TX, BNPH-20090825BIJ; Lake Brownwood, TX, BNPH-20090826AAU; Midway, TX, BNPH-20111013ACU; Moulton, TX, BNPH-20111115ACL; Flatonina, TX, BNPH-20120620ABO; Moran, TX, BNPH-20130312ABB; and Grant, OK, BNPH-20141029ACJ.

<sup>15</sup> Pyeatt has been the permittee for the following five facilities: KPWJ (formerly KKLb), Madisonville, TX; DKFON, Menard, TX; DKXXS, Menard, TX; KBYC, Markham, TX; and KVMK, Wheelock, TX.

<sup>16</sup> Pyeatt sold the following permits prior to constructing them: KPWJ, Madisonville, TX, BAPH-20091112AAU; KBYC, Markham, TX, BAPH-20140114AFM; and KVMK, Wheelock, TX, BAPH-20140423ACK.

<sup>17</sup> Pyeatt cancelled the permits for DKFON and DKXXS, both Menard, TX, prior to constructing them.



Pyeatt failed to file an application for the Elkhart permit. As for the Menard permits, one of the permits expired after three years and was cancelled. The other one received tolling treatment due to delays in Mexican clearance. Nevertheless, Pyeatt voluntarily cancelled that permit. Thus, even in the case of permits for which she has paid significant amounts of money, she has failed to construct the stations.

13. A final matter is worthy of note and further undermines the credibility of Pyeatt's promise of new service. In theory, it would be best if both the Pilot Point and Grant proposals could be granted. To that end, an initial analysis by LBDL of possible alternative frequencies that might be available at Grant and that would not conflict with KZMP's Application disclosed two such channels. However, in the days following the filing of Pyeatt's Petition for Rule Making, Charles Crawford, who uses the same address as Pyeatt, submitted proposals for use of both those frequencies in nearby Wright City, Oklahoma, and Bogata, Texas. No other alternative frequencies exist for an allotment at Grant. The uniquely well-timed and clearly orchestrated filings by Crawford, blocking the only alternative means of preserving KZMP's Class C0 allotment and delivering service to the population of Grant, further undermine Pyeatt's the credibility of expression of interest in providing that service.

14. When LBDL identified this coincidence in a prior pleading, Pyeatt responded by stating that "[w]hile I fully acknowledge that Mr. Crawford and I share a business address and that on occasion we share information about Commission rules, practices and procedures, I am not responsible for any petitions for rule making which he may have filed."<sup>18</sup> Whether or not Pyeatt had any responsibility for the filing of the Crawford petitions, however, the filings could not have been a coincidence. Rather, the timing of the filings was carefully planned to avoid the

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<sup>18</sup> See Declaration of Katherine Pyeatt attached to Reply to Oppositions dated December 31, 2014.

possibility of a resolution of the conflict between the Grant proposal and the KZMP-FM modification application.

15. In contrast, LBDL's parent, Liberman Broadcasting, Inc., is the licensee of 27 radio and television stations in Texas, Colorado, California, New York, Arizona, Illinois, Florida and Utah and has a long history of broadcast service to Hispanic viewers and listeners in those states. Pyeatt's current application proposes service to a community of 346 people. However, if the past is any indication of future performance, the likelihood of the residents of Grant, Oklahoma, ever receiving that service from Katherine Pyeatt is nil. Her claims in the Grant application and rule making petition, therefore, should not be viewed as a *bona fide* expression of interest sufficient to bar implementation of actual service to the public by a veteran broadcaster.

16. LBDL is not aware of any other parties, besides Pyeatt and Charles Crawford, expressing interest in filing applications for any of the three curiously timed allotment proposals. Since that is the case, LBDL respectfully requests that the Bureau delay action on the pending Wright City and Bogata allotment proposals until action is taken in this proceeding and evaluate all three proposals in the context of their effect on the mutual exclusivity between the KZMP-FM application and the proposed Grant allotment.

#### **IV. CONCLUSION**

LBDL's application is properly and timely filed to implement its Class C0 status and it should be processed and granted. Pyeatt, on the other hand, has stated on dozens of separate occasions that she will construct the facilities she proposes, if granted a permit. However, despite the fact that on at least five occasions she actually obtained permits, it appears that she has yet to construct or license a station. The Commission has no reliable basis to believe that she



will do so on this occasion. Thus, given the choice whether to believe that Pyeatt will construct the proposed Grant facility or that LBDL will construct the proposed KZMP-FM facility, the answer should be obvious. The Bureau should not downgrade KZMP's allotment and channel class.

Respectfully Submitted,

By:

/s/ 

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*Counsel to Liberman Broadcasting of*

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August 24, 2015

**DECLARATION OF BLIMA TULLER**

1. My name is Blima Tuller, and I am the Chief Financial Officer of Liberman Broadcasting, Inc., parent of the licensee of KZMP-FM, Pilot Point, Texas. I make this declaration in support of the Response to Order to Show Cause based on my personal knowledge and information available to me in my position.

2. I have reviewed and am familiar with the Response to Order to Show Cause and, to the best of my knowledge and belief, the information contained therein is true and accurate.

I, Blima Tuller, declare under penalty of perjury that the foregoing is true and correct.

Executed on August 24, 2015.

A handwritten signature in dark ink, appearing to be 'B. Tuller', written over a horizontal line.

Blima Tuller

**CERTIFICATE OF SERVICE**

I, Mark Lipp, hereby certify that on August 24, 2015, I caused a copy of the foregoing "Opposition to Informal Objection" to be transmitted by first class mail, to the following:

Katherine Pyeatt  
2215 Cedar Springs Road  
Suite 1605  
Dallas, TX 75201

A handwritten signature in cursive script, reading "Mark Lipp", is written over a horizontal line.